

The State of South Carolina



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July 2, 1987

The Honorable Peden McLeod
Member, South Carolina Senate
501 Gressette Building
Columbia, South Carolina 29202

Dear Senator McLeod:

Your recent letter has been referred to me for reply. Colleton County holds by statute an election for the office of Colleton County Veterans Affairs Officer. This is apparently a non-binding election to advise the Legislative Delegation of a proposed candidate to fill the Veterans Affairs Office as provided for in South Carolina Code of Laws, 1976, Section 25-11-40. You have stated that the advisory election was held on May 19, 1987, thereafter a protest dated May 29, 1987, and addressed to you was filed by Clarence Smalls. This protest is based primarily upon one poll being opened early. From reading the information you sent and from our telephone conversation, it is my understanding that the election is conducted by persons other than the county election commission. This situation is not one specifically covered by a statute.

The statutes generally envision that the county election commissions will conduct all general and special elections within their county. See, South Carolina Code of Laws, 1976, Sections 7-13-10; 7-13-70; and 7-13-340. A protest from these elections to the county board within a prescribed and binding time is likewise established by statute. See, South Carolina Code of Laws, 1976, Section 7-17-10 through 7-17-100; Smith v. Hendrix, 265 S.C. 417, 219 S.E.2d 312 (1975).

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Laws regulating elections and the protest of these elections are strictly governed by statutory provisions. 29 C.J.S. Elections, §252. There is no right to protest or appeal an election in the absence of a statutory right and these requirements must be strictly followed. 29 C.J.S. Elections, §§246, 247, 306; Smith vs. Hendrix, supra.

The election for the Colleton County Veterans Affairs Officer, however, was not conducted by the county election commission and the Act setting up this election in Colleton County does not provide for a protest procedure. See Act 16 of the 1973 Acts and Joint Resolutions.

Due to the foregoing facts, there is no clear answer to your question as only a court of competent jurisdiction could definitively answer this question. However, without judicial guidance as to this question, it would appear that however you approach this question the protest most probably would be disallowed.

First, the Act itself does not provide for a protest procedure and as noted above the right to protest is strictly governed by statute.

Second, should a protest be allowed it would probably have to be filed with either the entity that conducted the election or the county election commission. This was not done.

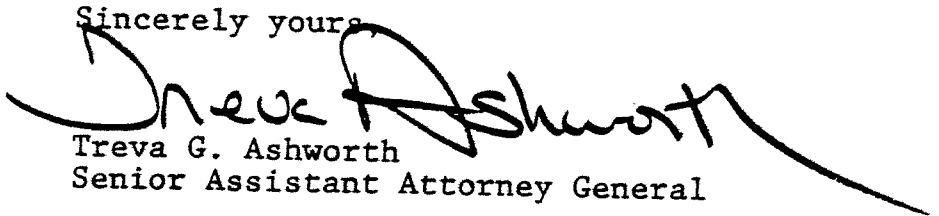
Third, if the general laws of protest are applied, the protest would have to have been filed by noon Monday following the day the election results were declared. I note the letter you received was dated ten days following the election and, therefore, depending upon the date the protest was filed it may have been filed too late. Smith vs. Hendrix, supra.

As additional considerations this election is apparently a non-binding election that is conducted much like the old advisory elections for magistrates. The winner of this election is reported to the legislative delegation, but it is the delegation that must actually name the person to this post and who have the right to remove him. See, Section 25-4-40. And, as you point out in your letter, the standard for review for a protest of an election, is that the protested activity would have affected the outcome of the election. Wright vs. State Board of Canvassers,

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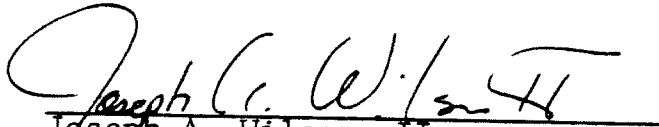
76 S.C. 5/4, 575 S.E. 536 (1907). You have stated that even without this poll being counted, the person declared elected would still have won.

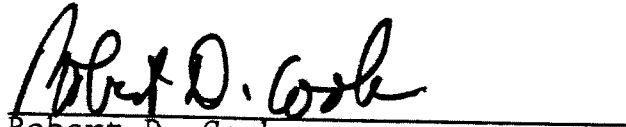
Sincerely yours,


Treva G. Ashworth
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TGA/fg

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